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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

No. 3:19-cr-00407-SI

v.

**THIRD NOTICE OF SUPPLEMENTAL
AUTHORITIES**

AGUSTIN MACHIC-XIAP,

Defendant.

This court heard oral arguments on defendant's motion to dismiss on April 22, 2021. On April 26, 2021, the United States Court of Appeals for the Ninth Circuit issued *United States v. Alaya-Bello*, 19-50366, and *United States v. Velez-Gonzalez*, 19-50368 (9th Cir. Apr. 26, 2021). See <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/04/26/19-50366.pdf> (last accessed April 26, 2021). This consolidated decision is relevant because it reaffirms that (1) federal classifications based on alienage are subject to rational basis review, including challenges to illegal entry crimes; (2) disparate impact does not equal disparate treatment; (3) to establish disparate impact, equal protection claimants must point to a case of a similarly situated defendant who was treated

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differently; and (4) illegal entry crimes and the manner in which the government chooses to prosecute them passes the rational basis test. The decision did not address *Arlington Heights*.¹

DATED: April 27, 2021

Respectfully submitted,

SCOTT ERIK ASPHAUG
Acting United States Attorney

/s/ Sarah Barr

Sarah Barr, WSBA #40758
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¹ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).
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